

It is the position of the Illinois Department of Revenue that the exemptions listed in the Illinois Code of Civil Procedure are applicable to levies under Section 1109 of the Income Tax Act only where expressly incorporated. See 35 ILCS 5/1109. (This is a GIL).

July 5, 2001

Dear Xxxxx:

This letter is in response to your inquiry that we received on July 2, 2001. The nature of your inquiry and the information you have faxed to us in conjunction therewith require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at the Department's Website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

We understand that you, owe the Illinois Department of Revenue an Illinois Income Tax liability. We further understand that the Department has served a Notice of Levy upon the College Retirement Equities Fund. The Fund holds a retirement certificate from which you had received an annuity payment. Pursuant to the levy, the Fund has paid this retirement certificate payment to the Department. You contend that this is an illegal levy and cite as your authority Section 12-1006 of the Code of Civil Procedure, 735 ILCS 5/12-1006. This provision is contained in Article XII of the Illinois Code of Civil Procedure (ICCP). Article XII grants authority for collection of judgments through liens, garnishments, and wage deductions.

The Illinois Department of Revenue does not rely upon the ICCP for its authority to issue liens, garnishments and wage deductions for the collection of delinquent tax liabilities, because the Department is specifically granted such authority within the tax acts. Section 1109 of the Illinois Income Tax Act provides in pertinent part:

If such tax remains unpaid for 10 days after demand has been made and no proceedings have been taken to review the same, the Department may issue a warrant directed to any sheriff or other person authorized to serve process, commanding the sheriff or other person to levy upon the property and rights to property (whether real or personal, tangible or intangible) of the taxpayer, **without exemption**, found within his jurisdiction, for the payment of the amount thereof with the added penalties, interest and the cost of executing the warrant. (Emphasis added)

It is the position of the Illinois Department of Revenue that the exemptions listed in the ICCP are applicable to levies under Section 1109 of the Income Tax Act only where expressly incorporated. For example, Section 1109 expressly adopts the limiting provisions regarding wage deductions set forth in Section 12-803 of the ICCP. The exemption for retirement payments found in Section 12-1006 is not incorporated by Section 1109. As a result, Section 12-1006 does not exempt retirement payments from levies initiated by the Department under Section 1109. We therefore conclude the Department's levy of your CREF retirement payment was legal and proper.

You have also raised the issue of the payment amount you have been making to the Department. You contend you are only required to make a monthly payment of \$50.00 pursuant to a contract you entered into with CCB Credit Services Inc. (CCB). In support of this position you cite the Taxpayer Bill of Rights.

Section 4 of the Taxpayer Bill of Rights, 20 ILCS 2520/4, requires the Department to not cancel any installment contract unless the taxpayer fails to provide accurate financial information, fails to pay any tax or does not respond to any Department request for any additional financial information. However, a standard provision in all Department installment contracts is that the payment agreement is for a set (e.g. 6 month) period, after which the Department has the right to increase payments or demand full payments based upon the taxpayer's financial situation.

You have submitted no documentation that you have a written payment agreement with the Department. Therefore we believe the Department was within its rights to request additional financial information to use as a basis for increased payment amounts for this account.

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk